

FIRST REGULAR SESSION

HOUSE BILL NO. 892

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SHUMAKE.

2038H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 620.2005, RSMo, and to enact in lieu thereof one new section relating to the Missouri works program.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 620.2005, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 620.2005, to read as follows:

620.2005. **1.** As used in sections 620.2000 to 620.2020, the following terms mean:

(1) "Average wage", the new payroll divided by the number of new jobs, or the payroll of the retained jobs divided by the number of retained jobs;

(2) "Commencement of operations", the starting date for the qualified company's first new employee, which shall be no later than twelve months from the date of the approval;

(3) "County average wage", the average wages in each county as determined by the department for the most recently completed full calendar year. However, if the computed county average wage is above the statewide average wage, the statewide average wage shall be deemed the county average wage for such county for the purpose of determining eligibility. The department shall publish the county average wage for each county at least annually. Notwithstanding the provisions of this subdivision to the contrary, for any qualified company that in conjunction with their project is relocating employees from a Missouri county with a higher county average wage, the company shall obtain the endorsement of the governing body of the community from which jobs are being relocated or the county average wage for their project shall be the county average wage for the county from which the employees are being relocated;

(4) "Department", the Missouri department of economic development;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

- 18 (5) "Director", the director of the department of economic development;
- 19 (6) "Employee", a person employed by a qualified company, excluding:
- 20 (a) Owners of the qualified company unless the qualified company is participating in an
- 21 employee stock ownership plan; or
- 22 (b) Owners of a noncontrolling interest in stock of a qualified company that is publicly
- 23 traded;
- 24 (7) "Existing Missouri business", a qualified company that, for the ten-year period
- 25 preceding submission of a notice of intent to the department, had a physical location in Missouri
- 26 and full-time employees who routinely [perform] **performed** job duties within Missouri;
- 27 (8) "Full-time employee", an employee of the qualified company that is scheduled to
- 28 work an average of at least thirty-five hours per week for a twelve-month period, and one for
- 29 which the qualified company offers health insurance and pays at least fifty percent of such
- 30 insurance premiums **or reimburses the employee for fifty percent of any insurance**
- 31 **premiums for health insurance purchased from a third party.** An employee that spends less
- 32 than fifty percent of the employee's work time at the facility shall be considered to be located at
- 33 a facility if the employee receives his or her directions and control from that facility, is on the
- 34 facility's payroll, one hundred percent of the employee's income from such employment is
- 35 Missouri income, and the employee is paid at or above the applicable percentage of the county
- 36 average wage;
- 37 (9) "Local incentives", the present value of the dollar amount of direct benefit received
- 38 by a qualified company for a project facility from one or more local political subdivisions, but
- 39 this term shall not include loans or other funds provided to the qualified company that shall be
- 40 repaid by the qualified company to the political subdivision;
- 41 (10) "NAICS" or "NAICS industry classification", the classification provided by the
- 42 most recent edition of the North American Industry Classification System as prepared by the
- 43 Executive Office of the President, Office of Management and Budget;
- 44 (11) "New capital investment", shall include costs incurred by the qualified company at
- 45 the project facility after acceptance by the qualified company of the proposal for benefits from
- 46 the department or the approval notice of intent, whichever occurs first, for real or personal
- 47 property, and may include the value of finance or capital leases for real or personal property for
- 48 the term of such lease at the project facility executed after acceptance by the qualified company
- 49 of the proposal for benefits from the department or the approval of the notice of intent;
- 50 (12) "New direct local revenue", the present value of the dollar amount of direct net new
- 51 tax revenues of the local political subdivisions likely to be produced by the project over a
- 52 ten-year period as calculated by the department, excluding local earnings tax, and net new utility

53 revenues, provided the local incentives include a discount or other direct incentives from utilities
54 owned or operated by the political subdivision;

55 (13) "New job", the number of full-time employees located at the project facility that
56 exceeds the project facility base employment less any decrease in the number of full-time
57 employees at related facilities below the related facility base employment. No job that was
58 created prior to the date of the notice of intent shall be deemed a new job;

59 (14) "New payroll", the amount of wages paid for all new jobs, located at the project
60 facility during the qualified company's tax year that exceeds the project facility base payroll;

61 (15) "Notice of intent", a form developed by the department and available online,
62 completed by the qualified company, and submitted to the department stating the qualified
63 company's intent to request benefits under this program;

64 (16) "Percent of local incentives", the amount of local incentives divided by the amount
65 of new direct local revenue;

66 (17) "Program", the Missouri works program established in sections 620.2000 to
67 620.2020;

68 (18) "Project facility", the building or buildings used by a qualified company at which
69 new or retained jobs and any new capital investment are or will be located. A project facility
70 may include separate buildings located within sixty miles of each other such that their purpose
71 and operations are interrelated; provided that where the buildings making up the project facility
72 are not located within the same county, the average wage of the new payroll shall exceed the
73 applicable percentage of the highest county average wage among the counties in which the
74 buildings are located. Upon approval by the department, a subsequent project facility may be
75 designated if the qualified company demonstrates a need to relocate to the subsequent project
76 facility at any time during the project period;

77 (19) "Project facility base employment", the greater of the number of full-time
78 employees located at the project facility on the date of the notice of intent or, for the
79 twelve-month period prior to the date of the notice of intent, the average number of full-time
80 employees located at the project facility. In the event the project facility has not been in
81 operation for a full twelve-month period, the average number of full-time employees for the
82 number of months the project facility has been in operation prior to the date of the notice of
83 intent;

84 (20) "Project facility base payroll", the annualized payroll for the project facility base
85 employment or the total amount of wages paid by the qualified company to full-time employees
86 of the qualified company located at the project facility in the twelve months prior to the notice
87 of intent. For purposes of calculating the benefits under this program, the amount of base payroll
88 shall increase each year based on an appropriate measure, as determined by the department;

89 (21) "Project period", the time period within which benefits are awarded to a qualified
90 company or within which the qualified company is obligated to perform under an agreement with
91 the department, whichever is greater;

92 (22) "Projected net fiscal benefit", the total fiscal benefit to the state less any state
93 benefits offered to the qualified company, as determined by the department;

94 (23) "Qualified company", a firm, partnership, joint venture, association, private or
95 public corporation whether organized for profit or not, or headquarters of such entity registered
96 to do business in Missouri that is the owner or operator of a project facility, certifies that it offers
97 health insurance to all full-time employees of all facilities located in this state, and certifies that
98 it pays at least fifty percent of such insurance premiums **or reimburses full-time employees for**
99 **fifty percent of any insurance premiums for health insurance purchased from a third**
100 **party**. For the purposes of sections 620.2000 to 620.2020, the term "qualified company" shall
101 not include:

102 (a) Gambling establishments (NAICS industry group 7132);

103 (b) Store front consumer-based retail trade establishments (under NAICS sectors 44 and
104 45), except with respect to any company headquartered in this state with a majority of its
105 full-time employees engaged in operations not within the NAICS codes specified in this
106 subdivision;

107 (c) Food and drinking places (NAICS subsector 722);

108 (d) Public utilities (NAICS 221 including water and sewer services);

109 (e) Any company that is delinquent in the payment of any nonprotested taxes or any other
110 amounts due the state or federal government or any other political subdivision of this state;

111 (f) Any company requesting benefits for retained jobs that has filed for or has publicly
112 announced its intention to file for bankruptcy protection. However, a company that has filed for
113 or has publicly announced its intention to file for bankruptcy may be a qualified company
114 provided that such company:

115 a. Certifies to the department that it plans to reorganize and not to liquidate; and

116 b. After its bankruptcy petition has been filed, it produces proof, in a form and at times
117 satisfactory to the department, that it is not delinquent in filing any tax returns or making any
118 payment due to the state of Missouri, including but not limited to all tax payments due after the
119 filing of the bankruptcy petition and under the terms of the plan of reorganization. Any taxpayer
120 who is awarded benefits under this subsection and who files for bankruptcy under Chapter 7 of
121 the United States Bankruptcy Code, Title 11 U.S.C., shall immediately notify the department and
122 shall forfeit such benefits and shall repay the state an amount equal to any state tax credits
123 already redeemed and any withholding taxes already retained;

124 (g) Educational services (NAICS sector 61);

- 125 (h) Religious organizations (NAICS industry group 8131);
126 (i) Public administration (NAICS sector 92);
127 (j) Ethanol distillation or production;
128 (k) Biodiesel production; or
129 (l) Health care and social services (NAICS sector 62). Notwithstanding any provision
130 of this section to the contrary, the headquarters, administrative offices, or research and
131 development facilities of an otherwise excluded business may qualify for benefits if the offices
132 or facilities serve a multistate territory. In the event a national, state, or regional headquarters
133 operation is not the predominant activity of a project facility, the jobs and investment of such
134 operation shall be considered eligible for benefits under this section if the other requirements are
135 satisfied;
- 136 (24) "Related company", shall mean:
- 137 (a) A corporation, partnership, trust, or association controlled by the qualified company;
138 (b) An individual, corporation, partnership, trust, or association in control of the
139 qualified company; or
140 (c) Corporations, partnerships, trusts or associations controlled by an individual,
141 corporation, partnership, trust, or association in control of the qualified company. As used in this
142 paragraph, "control of a qualified company" shall mean:
- 143 a. Ownership, directly or indirectly, of stock possessing at least fifty percent of the total
144 combined voting power of all classes of stock entitled to vote in the case of a qualified company
145 that is a corporation;
- 146 b. Ownership of at least fifty percent of the capital or [profits] **profit** interest in such
147 qualified company if it is a partnership or association;
- 148 c. Ownership, directly or indirectly, of at least fifty percent of the beneficial interest in
149 the principal or income of such qualified company if it is a trust, and ownership shall be
150 determined as provided in Section 318 of the Internal Revenue Code of 1986, as amended;
- 151 (25) "Related facility", a facility operated by the qualified company or a related company
152 located in this state that is directly related to the operations of the project facility or in which
153 operations substantially similar to the operations of the project facility are performed;
- 154 (26) "Related facility base employment", the greater of the number of full-time
155 employees located at all related facilities on the date of the notice of intent or, for the
156 twelve-month period prior to the date of the notice of intent, the average number of full-time
157 employees located at all related facilities of the qualified company or a related company located
158 in this state;
- 159 (27) "Related facility base payroll", the annualized payroll of the related facility base
160 payroll or the total amount of taxable wages paid by the qualified company to full-time

161 employees of the qualified company located at a related facility in the twelve months prior to the
162 filing of the notice of intent. For purposes of calculating the benefits under this program, the
163 amount of related facility base payroll shall increase each year based on an appropriate measure,
164 as determined by the department;

165 (28) "Rural area", a county in Missouri with a population less than seventy-five thousand
166 or that does not contain an individual city with a population greater than fifty thousand according
167 to the most recent federal decennial census;

168 (29) "Tax credits", tax credits issued by the department to offset the state taxes imposed
169 by chapters 143 and 148, or which may be sold or refunded as provided for in this program; **and**

170 (30) "Withholding tax", the state tax imposed by sections 143.191 to 143.265. For
171 purposes of this program, the withholding tax shall be computed using a schedule as determined
172 by the department based on average wages[; and

173 (31)] .

174 2. This section is subject to the provisions of section 196.1127.

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